

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

The Deposition of MICHAEL SCHMUHL

Date: Tuesday, July 30, 2013

Time: 10:12 a.m.

Place: Baker & Daniels, LLP  
202 South Michigan Street, 1400  
KeyBank Building  
South Bend, Indiana 46601

Called as a witness by the Plaintiff in accordance with the Federal Rules of Civil Procedure for the United States District Court, Northern District of Indiana, South Bend Division, pursuant to Notice.

Reported by  
Angela J. Galipeau, RPR, CSR  
Notary Public, State of Indiana

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1 hard to interpret. So no or yes or some kind of verbal 2 English response is preferable. Is that okay? 3 A. Yes. 4 Q. Also, I'm not here to try to trick you or pull any kind of 5 shenanigans on you. If I ask you a question that you 6 don't understand, let me know. Okay? 7 A. Okay. 8 Q. I'll try to restate it. But if you answer a question I 9 ask without asking me to restate it, then I'm going to be 10 assuming that you understood the question that was being 11 asked. Is that fair? 12 A. Yes, that's fair. 13 Q. And if you've got any questions that you want to take a 14 break and talk to your legal representatives, then feel 15 free to ask for that and we can take all the time you 16 need. Is that okay? 17 A. Yes. 18 Q. How old are you? 19 A. I'm 30. 20 Q. And you're employed currently with the City of South Bend; 21 is that correct? 22 A. I am not. 23 Q. You were employed by the City of South Bend? 24 A. I was. 25 Q. Tell me about your educational background.	1 moved back home, worked in his congressional office for -- 2 from July of '09 to February of '10. Then he asked me to 3 run his reelection campaign for Congress. I did that 4 until November of that year. 5 Shortly thereafter, a friend of mine from high 6 school, Pete Buttigieg, was interested in running for 7 mayor. He asked me to run his campaign for mayor. We won 8 the primary, won the general. And after winning the 9 general election, he asked me to be his chief of staff. I 10 was his chief of staff through the transition, taking on 11 full duties January 1st, 2012. And I was chief of staff 12 from January 1st, 2012, until last month. 13 Q. Describe for me what the duties -- I guess what the job 14 description is for a chief of staff in the position you 15 were in. 16 A. First and foremost, manage the office, the day-to-day 17 operations of the office, manage the staff, report to me, 18 and then ultimately report to the mayor, served as a 19 liaison for the mayor through a number of city 20 departments, oversaw sensitive issues with the city, 21 relating to either economic development, legislative 22 developments, political developments, things of that 23 nature. 24 Q. Who did you report directly to? 25 A. To Mayor Pete Buttigieg.
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1 A. I grew up in South Bend. I went to St. Mary's of the 2 Assumption grade school. I went to St. Joe High School. 3 I went to the University of Notre Dame. 4 Q. And when did you graduate? 5 A. From Notre Dame? 6 Q. Yes. 7 A. 2005. 8 Q. What was your degree in? 9 A. It was a bachelor's in history. 10 Q. Any additional education beyond that? 11 A. No. No. 12 Q. Okay. What did you do after you graduated from Notre 13 Dame? 14 A. I worked for a time as a journalist in the Twin Cities, 15 Minneapolis-St. Paul. Shortly after moving there, I was 16 contacted by the <i>Washington Post</i> to apply for a position 17 in the newsroom. I worked at the <i>Washington Post</i> , 18 ultimately accepted that job, moved to Washington DC, 19 worked for the <i>Washington Post</i> for three years, from July 20 of '06 to July of '09. 21 I was interested in getting involved in politics and 22 public service. I contacted then Congressman Joe 23 Donnelly's office on Capitol Hill to inquire about 24 employment there. Congressman Donnelly offered me a 25 position, not on Capitol Hill, but in South Bend. So I	1 Q. So is it safe to assume then you were somewhat the second; 2 he was the top and you were the rung underneath him with 3 respect to the hierarchy in that office in the 4 administration? 5 A. Yes. 6 Q. Prior to taking that position, or any time while you had 7 that position, was there any kind of training or 8 educational programs you went to to help be able to 9 perform the duties of chief of staff? 10 A. I think that my experience in journalism and writing and 11 dealing with the media was important and critical. I 12 think that being a top aid to a congressman was also 13 sufficient preparation. And then also managing, you 14 know -- starting and managing two high profile political 15 campaigns and ultimately being successful in both was 16 adequate preparation. 17 Q. So what you're saying is basically other than the work 18 experience that you had after leaving Notre Dame, you 19 didn't have any specialized training or education to 20 perform the role as chief of staff? 21 MR. SULLIVAN: Objection, vague as to 22 "specialized training." Go ahead. 23 A. Could you clarify. 24 Q. Sure. Originally I asked you whether or not you had any 25 training or other specific education to assist you to fill

<p style="text-align: center;">Page 9</p> <p>1 the role of chief of staff. I believe you indicated to me    2 several areas where you had worked as far as aid, campaign    3 manager, journalist, but you didn't indicate anything    4 else. So I was just trying to clarify for me whether or    5 not that was basically the training you had.</p> <p>6 A. Yeah.</p> <p>7 Q. When did you first meet Karen DePaepe?</p> <p>8 A. I can't recall the exact date. Although, I did take a    9 tour of the South Bend Police Department and the    10 communications division early on in my time as chief of    11 staff.</p> <p>12 Q. Was that after January 1st of 2012?</p> <p>13 A. I can't remember. I don't remember.</p> <p>14 Q. What did the tour consist of?</p> <p>15 A. Literally just walking through and seeing where the    16 dispatchers sit, and I remember seeing the command screens    17 and how they respond to calls and things like that, 911    18 calls.</p> <p>19 Q. Did you meet Karen at a tour?</p> <p>20 A. I believe so, yes.</p> <p>21 Q. Did she participate in the tour, to your knowledge?</p> <p>22 A. I don't remember.</p> <p>23 Q. Do you know who else was with you, or was there anyone    24 else with you when you did this tour?</p> <p>25 A. I don't remember.</p>	<p>1 A. No.</p> <p>2 Q. Let me at this point in time, while I remember to tell    3 you, right now I'm looking at a period of time after    4 you -- after the mayor took office, which would have been    5 January 1st, 2012, and up until just before Karen was    6 terminated, in that timeframe there. Okay?</p> <p>7 A. Okay. Sure.</p> <p>8 Q. And my understanding is that you -- at some point in time    9 during that period of time, you were over in the    10 communications center and you took a tour. That was about    11 it?</p> <p>12 A. Uh-huh.</p> <p>13 Q. That's a yes?</p> <p>14 MR. SULLIVAN: Say yes or no.</p> <p>15 A. Yes.</p> <p>16 Q. At any point in time prior to Karen's termination -- now    17 this will go beyond or before even January 1st, 2012 --    18 did you receive any kind of instruction or information on    19 how their recording, the voice logger system or voice    20 recording system worked in the South Bend communications    21 department?</p> <p>22 A. No.</p> <p>23 Q. Since the termination of Karen, have you received any kind    24 of information or training with respect to how that system    25 worked?</p>
<p style="text-align: center;">Page 10</p> <p>1 Q. So when is it that you do remember specifically meeting    2 Karen?</p> <p>3 A. You know, I don't specifically remember meeting her. I    4 remember meeting a lot of people on the tour that were in    5 that center.</p> <p>6 Q. It doesn't necessarily have to be during the tour. After    7 the tour at some point in time you obviously met her, I'm    8 assuming. So do you remember when that was?</p> <p>9 A. The last time I remember meeting with her was a meeting    10 that I had with her in early April.</p> <p>11 Q. That's when she was terminated?</p> <p>12 A. Yes.</p> <p>13 Q. But before that, you don't have any specific recollection?</p> <p>14 A. I don't.</p> <p>15 Q. Other than the time that you took the tour in the    16 communications center at the South Bend Police Department,    17 did you ever -- were you ever over there again in that    18 area of -- in that particular department?</p> <p>19 MR. SULLIVAN: Objection. Communications    20 department?</p> <p>21 MR. DUERRING: Yes.</p> <p>22 MR. SULLIVAN: Yeah.</p> <p>23 A. Before she was --</p> <p>24 BY MR. DUERRING:</p> <p>25 Q. Yes.</p>	<p>1 MR. SULLIVAN: Objection, compound. Information    2 or training can be two wildly different things. You    3 can answer.</p> <p>4 A. Information, yes.</p> <p>5 Q. Okay. What type of information do you recall receiving?</p> <p>6 A. I remember learning about the different lines in the    7 police department that are recorded and for what purpose.</p> <p>8 Q. Anything else?</p> <p>9 A. Just that it was standard -- it's standard protocol in a    10 police department to record 911 dispatches, calls that    11 come into the front desk. The unique circumstance with    12 this issue is that other conversations were being    13 recorded, copied, and used.</p> <p>14 Q. Anything else?</p> <p>15 A. That, I believe, DVD's or CD's were stored in the director    16 of communication's office, sort of backup audio, hard    17 copies I think were stored in that office. And that's    18 about the extent of the information.</p> <p>19 Q. Okay. Going back then, first thing you said that you --    20 information that you learned was about the different lines    21 that were being recorded and the purpose. Tell me what    22 you learned with specific regard to the lines that were    23 being recorded and the purpose of those lines.</p> <p>24 A. On March 23rd, 2012, I was in a meeting with the U.S.    25 Attorney for Northern Indiana, three of his deputies, and</p>

<p style="text-align: right;">Page 13</p> <p>1 the number two of the FBI for the State of Indiana where    2 they informed me that certain telephone lines in the South    3 Bend Police Department were being recorded and that they    4 were being recorded improperly, and that there were    5 violations there, and that the director of communications    6 at the time was listening to these conversations,    7 recording these conversations, copying those conversations    8 and then delivering them to the then chief of police so he    9 could listen to those tapes to see who was loyal or    10 disloyal to him on the force.</p> <p>11 Stemming from that meeting, it was very clear that    12 there were problems with two people who work for the city,    13 and there was a problem with our compliance with the law    14 and policy as it relates to the recording of phone lines    15 in the South Bend Police Department.</p> <p>16 Leaving that meeting, it's my responsibility as chief    17 of staff to brief the mayor on that, but also -- to get to    18 your question -- to make sure that our policy is in    19 compliance with all applicable laws. And so I made sure    20 that I learned what lines were recorded properly. And we    21 just followed through with setting that policy, so making    22 sure that all recording was halted with the exception of    23 911 emergency calls, dispatch calls, and calls to the    24 front desk.</p> <p>25 Q. Okay. Anything else about that particular aspect that I</p>	<p style="text-align: right;">Page 15</p> <p>1 Q. Okay. Specifically with regard to the meeting that you    2 say took place on March 23rd, 2012, you mentioned the    3 meeting with the U.S. Attorney for the Northern District    4 of Indiana.</p> <p>5 A. Yes.</p> <p>6 Q. And my understanding is that is David Capps?</p> <p>7 A. David Capp, C-a-p-p.</p> <p>8 Q. And who else? Specifically not title, but by name.</p> <p>9 A. Sure. Kenneth Hayes, Clifford Johnson, Donald Schmid, and    10 the number two for the FBI in the State of Indiana, and I    11 believe his name is Kevin Lyons. The number one was sick.</p> <p>12 Q. And where did that meeting take place?</p> <p>13 A. It took place at the federal building in downtown South    14 Bend.</p> <p>15 Q. Besides -- was there anyone else besides you from the city    16 present during that meeting?</p> <p>17 A. Yes.</p> <p>18 Q. Who else?</p> <p>19 A. Interim City Attorney Aladean DeRose, and special counsel    20 to the city, Richard Hill.</p> <p>21 Q. And yourself, correct?</p> <p>22 A. Yes.</p> <p>23 Q. Anyone else?</p> <p>24 A. No.</p> <p>25 Q. Was there anyone in particular from the government, and</p>
<p style="text-align: right;">Page 14</p> <p>1 asked you about?</p> <p>2 A. Recording of phone lines?</p> <p>3 Q. Yeah, learning about the different lines that were    4 recorded and their purpose.</p> <p>5 A. Additionally, the City of South Bend went over a Voiceover    6 IP transition. This commenced under the Luecke    7 administration and was finalized under the Buttigieg    8 administration. And I did learn about our Voiceover IP    9 capabilities and also the on-demand feature that telephone    10 lines have in the City of South Bend.</p> <p>11 Now, that's separate from the equipment that was in    12 the 911 call center. These are on-demand features on    13 somebody's cubicle desk phone or their desk phone that    14 they could actually ping in a code and that telephone call    15 would be recorded. However, it's a very different use    16 than what we're talking about with the police recording.</p> <p>17 With the Voiceover IP on-demand function, I am a    18 party of that conversation. So if I'm having a    19 conversation on the telephone, I can record that because    20 I'm one of the participants. With this other issue,    21 officer A and officer B could be having a conversation and    22 somebody completely removed from the conversation is    23 listening to that material and listening to that content.</p> <p>24 And that's the problem that the federal authorities    25 briefed me on.</p>	<p style="text-align: right;">Page 16</p> <p>1 that's either the FBI or the U.S. Attorney's office, that    2 did most of the talking or all of the talking?</p> <p>3 A. Two individuals did most of the talking.</p> <p>4 Q. Who would that be?</p> <p>5 A. David Capp and Donald Schmid.</p> <p>6 Q. Okay. Specifically -- were there any notes to your    7 knowledge taken of that meeting?</p> <p>8 MR. SULLIVAN: Objection, lack of foundation. Do    9 you mean by him or anybody?</p> <p>10 Q. Let me rephrase the question. To your knowledge, were any    11 notes taken during that meeting?</p> <p>12 A. Yes.</p> <p>13 Q. By whom?</p> <p>14 A. Aladean, Aladean DeRose.</p> <p>15 Q. Anybody else that you know of?</p> <p>16 A. No. I don't remember.</p> <p>17 Q. To the best of your recollection, what was it that    18 Mr. Capp said during that meeting?</p> <p>19 A. He said that the -- that his office and the FBI had    20 conducted a lengthy investigation into the telephone    21 recording practices in the South Bend Police Department.</p> <p>22 And he said that there were clear violations, and it    23 related to two people. He said that there was a    24 longstanding practice for the director of communications    25 at the chief's discretion to record certain telephone</p>

<p style="text-align: center;">Page 17</p> <p>1 lines in the department and that the capturing of certain 2 lines, the copying or recording of those certain lines, 3 and the use of those lines was out of compliance with 4 federal law.</p> <p>5 And he outlined essentially the behavior of the 6 former chief of police where he directed certain lines to 7 be recorded. And the director of communications made 8 copies of certain conversations, delivering them to the 9 chief, and then the use issue is the former chief was 10 listening to those conversations and using that material 11 to see who was loyal or disloyal to him in his capacity.</p> <p>12 Mr. Capp outlined that investigation, and I remember 13 he held two fingers up and said, "There are two problems, 14 again, director of communications, the chief of police." 15 And he also held up a sign, held up his hands and did a 16 sign, a T sign (indicating) and said, "What we're going to 17 do now is we're going to take a timeout. We're going to 18 take 60 days to allow the City Of South Bend to address 19 these issues."</p> <p>20 And it was very clear that it was two people who work 21 for the city were involved in this and that our policies 22 were out of compliance and that both of those things 23 needed to be fixed.</p> <p>24 Q. When you mentioned the behavior of the former chief of 25 police, who are you referring to?</p>	<p style="text-align: center;">Page 19</p> <p>1 there were or that they were saying there are? 2 A. No.</p> <p>3 Q. You had made reference initially that part of this was 4 learning about the purpose of the recordings. Then you 5 indicated that Mr. Capp had told you that the recordings 6 were being made to -- were being used for the chief, the 7 former chief in determining who is loyal or not. Is that 8 the purpose that you were referring to initially, or were 9 there any other purposes that were discussed?</p> <p>10 A. What was the purpose of the meeting?</p> <p>11 Q. Yes.</p> <p>12 A. The purpose of the meeting was for the U.S. Attorney to 13 give the City of South Bend a briefing on the findings of 14 their investigation.</p> <p>15 Q. I misunderstood. You said that you learned about the 16 different lines that were being recorded and the purpose 17 of those recordings, and then we discussed about this 18 meeting that took place. You mentioned in the meeting 19 that I think it was Mr. Capp had told you that these 20 recordings were being made and the chief was using them to 21 determine the loyalty or disloyalty of various officers. 22 Were there any other purposes for the recordings that 23 you were told or learned about during that meeting?</p> <p>24 A. No. The meeting with federal authorities focused on the 25 improper lines that were being recorded in the department.</p>
<p style="text-align: center;">Page 18</p> <p>1 A. I'm referring to Darryl Boykins.</p> <p>2 Q. Now, you mentioned -- is that pretty much everything you 3 recall David Capp saying during that meeting?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And there you mentioned, I think, Donald Schmid was 6 the other individual that did a substantial amount of 7 talking or talked more than others?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall what Mr. Schmid said?</p> <p>10 A. I remember Mr. Schmid outlined the time when he 11 interviewed former Chief Boykins about this during the 12 investigation and outlined a story where they asked him to 13 come in for the interview and bring materials relevant to 14 the investigation. And when they asked him if he brought 15 everything, and "everything" meaning all the copies of the 16 tapes, he said, "Well, I also made my own copy and I 17 didn't bring those."</p> <p>18 And the reaction in the room was they were sort of 19 shocked that the chief of police brought some copies and 20 some materials, but also had what had seemed to be a 21 personal set of these recordings. And that's about the 22 extent of what I remember from Mr. Schmid's comments.</p> <p>23 Q. Now, when they were making reference to this -- these 24 recordings being provided to Mr. Boykins, or Chief 25 Boykins, was there any comment on how many recordings</p>	<p style="text-align: center;">Page 20</p> <p>1 Stemming from that meeting was when I did my own due 2 diligence to see what other lines were being recorded in 3 the department of a law enforcement and appropriate 4 nature. Two very distinct things.</p> <p>5 Q. What lines during the -- during this particular March 23rd 6 meeting, which lines did you learn that were being 7 recorded?</p> <p>8 A. They said that a line --</p> <p>9 MR. SULLIVAN: Hold on. Objection, vague. Do 10 you mean which lines did he learn about on the 23rd?</p> <p>11 Q. Yes. What was discussed by any individual there that 12 taught you or informed you about the different lines that 13 were being recorded? What different lines were discussed 14 during that meeting?</p> <p>15 A. It was a line in the detective bureau, yeah.</p> <p>16 Q. Did they indicate, "they" meaning either Mr. Capp or 17 Mr. Schmid or anyone else there that you can name from the 18 government, when that line was -- or how long that line 19 had been recorded?</p> <p>20 A. In that meeting?</p> <p>21 Q. Yes.</p> <p>22 A. I don't remember.</p> <p>23 Q. Did they discuss who authorized that line to be recorded?</p> <p>24 A. Can you repeat that?</p> <p>25 Q. Did they discuss who authorized that line to be recorded?</p>

<p style="text-align: center;">Page 21</p> <p>1 A. Not specifically. But that could also be included in the 2 chief's discretion. A line that they used, that it was a 3 longstanding practice that at the chief's discretion 4 certain lines could be recorded via the director of 5 communications.</p> <p>6 Q. Did they explain to you how that happened in any way?</p> <p>7 A. What happened?</p> <p>8 Q. How it went from the chief's discretion for a line to be 9 recorded through the director of communications? Did they 10 explain, I guess, the logistics with respect to how a line 11 was recorded?</p> <p>12 A. In the meeting?</p> <p>13 Q. Yes.</p> <p>14 A. No.</p> <p>15 Q. At any time did either Mr. Capp or Mr. Schmid suggest that 16 anyone be terminated as a result of this?</p> <p>17 A. They said that we had problems with two people in the city 18 administration, and that there were clear -- you know, 19 there was clear noncompliance with certain issues.</p> <p>20 Q. Well, I'm asking did they suggest any particular 21 individual or individuals should be terminated as a result 22 of what they say they found?</p> <p>23 A. No.</p> <p>24 Q. Did they -- and again referring to either Mr. Capp or 25 Mr. Schmid -- detail for you in that meeting what they</p>	<p style="text-align: center;">Page 23</p> <p>1 A. The U.S. Attorney for Northern Indiana, David Capp, said 2 that they would take a timeout from the case to allow the 3 city to address these issues for 60 days.</p> <p>4 Q. Anything else? Was anything else said with respect to 5 this?</p> <p>6 A. As it relates to indictments or --</p> <p>7 Q. Yes.</p> <p>8 A. No.</p> <p>9 Q. Did Mr. Capp or anyone else from the government indicate 10 how the city should address these issues?</p> <p>11 A. I asked a question in the meeting and -- I asked a 12 question to them. I said, "Does this mean that we should 13 take care of a personnel matter and a policy matter?"</p> <p>14 Q. And what was the response?</p> <p>15 A. They said, "We're not going to tell the city what to do."</p> <p>16 Q. And who said that?</p> <p>17 A. David Capp.</p> <p>18 Q. Did he say anything else with respect to that issue?</p> <p>19 A. No.</p> <p>20 Q. Did he leave you with any impressions of what you should 21 do?</p> <p>22 A. Yes, absolutely.</p> <p>23 Q. What was the impression or impressions that he left?</p> <p>24 A. The strong impression that he left with me was that our 25 policies as it relates to telephone recording in the South</p>
<p style="text-align: center;">Page 22</p> <p>1 felt was -- the noncompliance of the recordings, why they 2 felt it was not in compliance with the Federal Wiretap 3 Act?</p> <p>4 A. Yes. Again, it was listening to conversations between 5 officer A and officer B without their knowledge. It was a 6 violation. Capturing that audio was a violation. Making 7 copies of that material was a violation, and that the 8 chief of police was then using that audio to see who was 9 loyal or disloyal to him on the police force.</p> <p>10 Q. Anything else that you can recall?</p> <p>11 A. No.</p> <p>12 Q. Was it explained by anyone as to how the chief was using 13 the tapes to determine who was loyal or disloyal?</p> <p>14 A. In the meeting?</p> <p>15 Q. Yes.</p> <p>16 A. Can you repeat it, sorry, one more time?</p> <p>17 Q. Did they explain how the use of the tapes to determine 18 whether or not a person was loyal or disloyal was being 19 done?</p> <p>20 A. No.</p> <p>21 Q. Approximately how long did this meeting last?</p> <p>22 A. Approximately 30 minutes.</p> <p>23 Q. Was there any discussion during the meeting of the federal 24 authorities charging anyone with a federal crime as a 25 result of what they found?</p>	<p style="text-align: center;">Page 24</p> <p>1 Bend Police Department were out of compliance with federal 2 law and their guidelines, and that there were two people 3 in the city administration who were responsible for that, 4 and that the impression was to end the investigation, that 5 those policies needed to be adjusted and put in compliance 6 and that personnel actions needed to be taken.</p> <p>7 Q. After that meeting was concluded, what did you do?</p> <p>8 A. I returned to my office in the County-City Building.</p> <p>9 Q. Then what?</p> <p>10 A. A meeting was convened with the mayor.</p> <p>11 Q. Was that the same day?</p> <p>12 A. Yes.</p> <p>13 Q. I'm assuming that took place in the mayor's office?</p> <p>14 A. Yes.</p> <p>15 Q. Who was present during that meeting?</p> <p>16 A. Myself, Aladean DeRose, Richard Hill, Mayor Buttigieg, and 17 Deputy Chief of Staff Katherine Roos.</p> <p>18 Q. How do you spell that?</p> <p>19 A. Last name, R-o-o-s.</p> <p>20 Q. Anyone else?</p> <p>21 A. I don't believe so.</p> <p>22 Q. Just an aside before I forget to ask, who is Matt Sikora?</p> <p>23 A. Matt Sikora?</p> <p>24 Q. Yeah.</p> <p>25 A. Is the mayor's executive assistant.</p>

<p style="text-align: center;">Page 25</p> <p>1           MR. SULLIVAN: That's S-i-k-u-r-a?</p> <p>2           THE WITNESS: S-i-k-o-r-a.</p> <p>3           MR. DUERRING: What occurred during this meeting?</p> <p>4           MR. SULLIVAN: At this point, I'll make an 5           objection because there were attorneys present at the 6           meeting. And why don't you give me, if you would, 7           Scott, five minutes to talk with my client and with 8           co-counsel. We want to be able to have you get to 9           the issues that you have legitimate questions about, 10           but we have to protect privilege. It's kind of 11           tricky because there were lawyers in that meeting. 12           Can we take a break?</p> <p>13           MR. DUERRING: Sure, that's fine.</p> <p>14           MR. SULLIVAN: I apologize that the question is 15           pending, but it does relate to privilege issues. So 16           we're off the record.</p> <p>17           (Recess taken.)</p> <p>18           MR. SULLIVAN: Back on the record. Counsel will 19           allow Mr. Schmuhl to answer your question about what 20           took place in the March 23rd meeting after he left 21           the U.S. Attorney's meeting in a limited manner as 22           follows: He can address any discussions or 23           communications between he, the mayor, and the 24           assistant chief of staff, Katherine Roos, as they 25           relate only to any discussion of job action that</p>	<p style="text-align: center;">Page 27</p> <p>1           Ms. DePaepe that occurred with the mayor at that 2           follow-up meeting. Did any such discussions or 3           decisions occur regarding Ms. DePaepe at the meeting 4           in the mayor's office?</p> <p>5           A. Uh-huh. The chief in his position was the primary focus 6           of that meeting, and Ms. DePaepe was more of a secondary 7           consideration. But it was clear in that meeting that two 8           personnel actions had to be taken following this meeting. 9           I mean, when you have the presidentially-appointed U.S. 10           Attorney for Northern Indiana and his three chief deputies 11           and the number two in the state for the FBI telling you 12           that you have two problems with two people and keeping 13           compliant with the laws, that's a very serious thing. And 14           in that meeting --</p> <p>15           Q. Now, I'm getting confused what meeting you're referring 16           to. The meeting with the U.S. Attorney's office? Because 17           I'm trying to focus right now on the meeting with the 18           mayor and the individuals --</p> <p>19           A. That's what I'm focusing on too. It was very clear that 20           two personnel actions needed to be taken. Again, the 21           chief was the primary focus of that meeting because of his 22           position and, you know, he's a department head, mayorally 23           appointed; but Ms. DePaepe's, you know, future was also 24           discussed.</p> <p>25           Q. Tell me about that discussion.</p>
<p style="text-align: center;">Page 26</p> <p>1           relates to Ms. DePaepe; but that I would instruct him 2           not to answer as to any other elements of that 3           discussion because they're privileged. And if you 4           would agree that his answer on that limited degree 5           doesn't waive any privilege, then we'd allow inquiry 6           to that extent.</p> <p>7           MR. DUERRING: I would agree to those parameters.</p> <p>8           MR. SULLIVAN: Thank you.</p> <p>9           BY MR. DUERRING:</p> <p>10           Q. Mr. Schmuhl, you understand -- during a break you 11           discussed this with counsel. You understand where we're 12           going with this?</p> <p>13           A. Yes.</p> <p>14           Q. So what happened during that meeting as it relates to 15           these kinds of discussions concerning Ms. DePaepe, if any?</p> <p>16           A. After the meeting with the U.S. Attorney, it was very 17           clear to me and to others in the room that personnel 18           action needed to be taken with two individuals, with the 19           chief of police and with the director of communications.</p> <p>20           MR. SULLIVAN: And his question then focuses on 21           the meeting that occurred in the mayor's office 22           afterwards.</p> <p>23           THE WITNESS: Yes.</p> <p>24           MR. SULLIVAN: And I'm allowing you to describe 25           any discussions or decisions that relate to</p>	<p style="text-align: center;">Page 28</p> <p>1           A. Again, I don't remember the specifics.</p> <p>2           MR. SULLIVAN: And sorry to be interrupting, but 3           just --you can tell him about discussions as long as 4           you don't touch on any discussions with Rich Hill or 5           Aladean DeRose.</p> <p>6           A. Attorneys, yeah. I don't remember the details. I just 7           remember that it was clear, again, that two personnel 8           actions had to be taken.</p> <p>9           Q. What kind of personnel actions had to be taken?</p> <p>10           A. As it relates to Ms. DePaepe?</p> <p>11           Q. Yes.</p> <p>12           A. In that meeting, it was clear that she could not be 13           director of communications.</p> <p>14           Q. How did that become clear?</p> <p>15           A. Again, being one of the two people that were responsible 16           for these issues, for our noncompliance, she needed to be 17           out of that position.</p> <p>18           Q. Was that decision made at this meeting with the mayor?</p> <p>19           A. I don't remember.</p> <p>20           Q. Was any decision made with respect to Ms. DePaepe's 21           employment with the city during that meeting?</p> <p>22           A. I don't remember.</p> <p>23           Q. What was the purpose of this meeting?</p> <p>24           A. To give the mayor a briefing on the meeting that we had 25           with the U.S. Attorney, his deputies, and the FBI.</p>

<p style="text-align: right;">Page 29</p> <p>1 Q. As I understand it, the only person that was present -- 2 there were two people present in the second meeting that 3 were present in the first meeting with the government. 4 That was yourself and Rich Hill, correct?</p> <p>5 A. In the meeting with the U.S. Attorney?</p> <p>6 Q. What I'm trying to figure out is who was -- you met with 7 the U.S. Attorney and the other individuals. I thought 8 you said it was Rich Hill with you when you met with the 9 U.S. Attorney.</p> <p>10 A. Rich Hill and Aladean DeRose.</p> <p>11 Q. And you three were in the second meeting as well, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Who conducted the briefing with respect to what occurred 14 in the meeting with the U.S. Attorney before the mayor?</p> <p>15 A. The three people that were present in that meeting.</p> <p>16 Q. So everybody basically contributed?</p> <p>17 A. Yes.</p> <p>18 Q. Did the mayor make a decision as to what should be done at 19 the meeting or at the conclusion of that meeting or any 20 time during that meeting?</p> <p>21 MR. SULLIVAN: Objection, vague. What should be 22 done about Ms. DePaepe?</p> <p>23 MR. DUERRING: About Ms. DePaepe.</p> <p>24 MR. SULLIVAN: At the follow-up meeting?</p> <p>25 MR. DUERRING: Yes.</p>	<p style="text-align: right;">Page 31</p> <p>1 (Recess taken.) 2 (Read back.)</p> <p>3 MR. SULLIVAN: Back on the record. And I 4 instruct the witness to answer that question to the 5 extent he recalls anything, limited to discussions 6 with Mayor Buttigieg or Assistant Chief of Staff 7 Katherine Roos. Go ahead.</p> <p>8 THE WITNESS: Okay. Again, in that meeting, 9 following the meeting with the U.S. Attorney, 10 deputies, and the FBI, most of the conversation 11 focused on former Chief Boykins. Although, we did 12 discuss both former Chief Boykins and Ms. DePaepe. 13 And the conversations that I had with Mayor Buttigieg 14 and Deputy Chief of Staff Katherine Roos, from that 15 meeting it was very clear that personnel actions had 16 to be taken on both fronts in that Ms. DePaepe could 17 no longer be the director of communications.</p> <p>18 BY MR. DUERRING:</p> <p>19 Q. Okay. And I appreciate what you've said. But, again, you 20 said that it was clear to you. And I'm trying to find out 21 why it was clear to you. What was said by either of those 22 individuals, the mayor or the deputy chief of staff, that 23 made it clear to you that this action -- at least that 24 Karen had to be removed as director of communications?</p> <p>25 A. I don't remember the specifics.</p>
<p style="text-align: right;">Page 30</p> <p>1 A. I don't remember.</p> <p>2 BY MR. DUERRING:</p> <p>3 Q. How long was that meeting?</p> <p>4 A. I don't recall the duration.</p> <p>5 Q. Was that meeting recorded or were notes taken during that 6 meeting?</p> <p>7 A. I believe notes were taken by Aladean DeRose.</p> <p>8 Q. You mentioned -- and, again, I want to make sure I have 9 your phraseology correct. It was clear -- very clear to 10 you that something had to be done with respect to the 11 chief and Ms. DePaepe. And what I'm trying to find out is 12 what discussion, what was said that made that very clear 13 to you?</p> <p>14 MR. SULLIVAN: Okay. Hold on.</p> <p>15 MR. DUERRING: Aside from anything any attorney 16 present said.</p> <p>17 MR. SULLIVAN: I understand. But if you would 18 allow me for purposes of delineating privilege, I'm 19 going to take another break with my client because I 20 think these are issues that are important and that 21 you're entitled to in regard to an employment action, 22 but it's very intertwined with a lot of other issues 23 that are privileged.</p> <p>24 MR. DUERRING: Okay.</p> <p>25 MR. SULLIVAN: We're off the record.</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. During that meeting, did you inform the mayor that the -- 2 that any representative from the federal government 3 advised that personnel decisions had to be made or 4 criminal charges or more indictments would result?</p> <p>5 A. No. But, again, the full briefing that I received from 6 those high level federal authorities gave me the strong 7 impression and really affected me and the others in the 8 room that they wouldn't be taking this time if it wasn't 9 very serious and if -- and changes needed to be made.</p> <p>10 Q. Did you communicate that impression to the mayor during 11 this meeting with the mayor?</p> <p>12 A. Absolutely.</p> <p>13 Q. How did you make that known to him or what did you 14 specifically say to him that passed that impression on to 15 him?</p> <p>16 A. I essentially detailed and outlined to the mayor what was 17 presented to me in that meeting with federal authorities, 18 that there was a practice with the director of 19 communications and the chief of police to record certain 20 telephone lines at the South Bend Police Department. But 21 what made this investigation unique was that they were 22 capturing telephone conversations between officers. They 23 were recording those conversations. They were making 24 copies of those conversations. And then the chief was 25 deciding who was loyal to him, who was disloyal to him.</p>

<p style="text-align: center;">Page 33</p> <p>1        And so in briefing the mayor, you know, you think    2        about the chief of police listening to other people's    3        telephone conversations to see who is loyal to him, and    4        the chief and Ms. DePaepe were the primary people    5        associated with that.</p> <p>6        Q. And this was something you communicated to the mayor?    7        A. I did communicate that to the mayor, and also that, you    8        know, the U.S. Attorney said we're taking a timeout for 60    9        days to allow the city to address these issues. And it    10       was my clear impression that we had 60 days to address the    11       personnel issues and the policy issues. And then if we    12       didn't, that the FBI would come back in and potentially    13       reopen that investigation.</p> <p>14       Q. Is there anything that you recall being said that you    15       already have not testified to that gave you that    16       impression?</p> <p>17            MR. SULLIVAN: At the meeting with Capp?</p> <p>18            MR. DUERRING: Yes.</p> <p>19            MR. SULLIVAN: You can answer.</p> <p>20        BY MR. DUERRING:    21        A. That I previously didn't say?</p> <p>22        Q. Yes.</p> <p>23        A. He just said we're taking a timeout for 60 days to allow    24        the city to address these issues.</p> <p>25        Q. Okay. So as I understand it, during the meeting with the</p>	<p style="text-align: center;">Page 35</p> <p>1        mayor and told him who was in the meeting, what they    2        discussed. He absorbs that. And it's very clear two    3        personnel actions had to be taken and that Ms. DePaepe    4        could no longer keep her job as director of    5        communications.</p> <p>6        Q. You mentioned that the focus of the criminal investigation    7        was on two people.</p> <p>8        A. Yes.</p> <p>9        Q. Who told you that or how did you get that impression?</p> <p>10       A. David Capp held up two fingers and said, "You have    11       problems with two people." And he referred to them by    12       title, director of communications and chief of police.</p> <p>13       Q. Okay. And you mentioned that the purpose was to determine    14       the loyalty -- or the listening of the recordings would    15       determine the loyalty of the officers, was that again    16       Mr. Capp that told you that was the purpose of it?</p> <p>17       A. It was either Mr. Capp or Mr. Schmid. I don't recall.</p> <p>18       Q. My understanding from your previous answers were that at    19       the conclusion of the meeting that you had with the mayor    20       and the other individuals you mentioned, the secondary    21       meeting or the second meeting, the briefing of the mayor,    22       that there was no formal decision with respect to    23       Ms. DePaepe and her employment with the city?</p> <p>24            MR. SULLIVAN: Objection, vague as to "formal    25       decision." Go ahead.</p>
<p style="text-align: center;">Page 34</p> <p>1        U.S. Attorney and federal government representatives,    2        nothing was communicated to you that a termination -- or    3        that personnel decisions had to be made; is that correct?</p> <p>4            MR. SULLIVAN: Objection, mischaracterizes. You</p> <p>5        say nothing was communicated to you, that's -- you're    6        asking him if those words were used. It's different    7        than saying nothing was communicated to you. The    8        witness may answer.</p> <p>9        A. I just think that the -- that meeting and the attendees of    10       that meeting showed the severity and the seriousness of    11       the problems in the South Bend Police Department; that,    12       you know, the top federal law enforcement prosecutor in    13       the northern part of our state, his three chief deputies    14       and the number two guy from the FBI in Indianapolis comes    15       to South Bend for a meeting is not to play nice.</p> <p>16        They conducted a criminal investigation. Two people    17        were the focus of that investigation. It related to the    18        improper recording, copying and use of telephone    19        conversations between police officers in the South Bend    20        Police Department. That's separate, completely separate    21        from regular law enforcement activity, talking to a    22        witness or talking to an informant, something like that,    23        all because the chief wanted to see who was loyal to him    24        or disloyal to him.</p> <p>25        And so that table is set. And I returned to the</p>	<p style="text-align: center;">Page 36</p> <p>1        A. From that meeting it was very, very clear that those two    2        people could no longer hold their positions in the city.</p> <p>3        Q. Was there anything clear about whether they could hold any    4        position with the city?</p> <p>5        A. I'm not sure if it was that meeting or a separate    6        conversation I had with the mayor. But we did entertain    7        very briefly the idea that Ms. DePaepe could be placed in    8        another city department and continue to work for the City    9        of South Bend. It was briefly entertained. We did not    10       follow through with that.</p> <p>11       Q. Why?</p> <p>12       A. The mayor felt that she should no longer have that    13        position, and it would probably be best if she was outside    14        the city.</p> <p>15       Q. So obviously there was another meeting with the mayor    16        after this particular meeting we were discussing that    17        occurred on the 23rd of March, correct?</p> <p>18       A. It may not have been a formal meeting. My office was    19        right next door to the mayor's. I would often be in his    20        office or he would be in mine, we'd meet in the hallway,    21        driving to an event. So we would talk frequently.</p> <p>22       Q. Okay. What is the next thing that you recall occurring as    23        it relates to Ms. DePaepe and her employment with the    24        city?</p> <p>25       A. The next week, on or around March 27th, I was trying to</p>

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<p>1 get in touch with Karen DePaepe to talk with her about  2 these issues. She called me in the -- in my office at the  3 County-City Building. I essentially said that we had a  4 meeting with federal authorities. They conducted an  5 investigation relating to the recording of telephone  6 lines.</p> <p>7 By that time, I feel from that conversation that she  8 knew that Darryl Boykins would not be chief of police for  9 much longer. She was very emotional on the telephone. I  10 told her that we had to take two personnel actions.  11 Darryl Boykins was the first. She was the second. She  12 was very emotional on the telephone. It was probably  13 about a ten-minute conversation.</p> <p>14 She vouched for the chief, said that he was a good  15 man, also discredited other officers associated with this  16 issue, basically saying they were out to get the chief.  17 They were gunning for him so to speak. I tried to be  18 sensitive on the phone, tried to listen to her concerns.  19 I was attempting to get her to come in to the County-City  20 Building to meet with me to discuss these issues.</p> <p>21 She declined that. She said, you know, I don't know  22 what I'm going to do. She was sort of rambling on the  23 telephone. And at the very, very end of the call, I  24 remember additionally that she said, "I may just resign by  25 the end of the day. I don't know." And we sort of left</p>	<p>1 I don't recall how we connected on the phone.  2 Q. Do you remember whether or not the phone conversation that  3 we're talking about with Karen occurred before or after  4 Chief Boykins was asked to resign?  5 A. I believe it was after.  6 Q. Do you recall during that conversation telling Karen that  7 if -- that if Chief Boykins had refused to resign, that he  8 would be indicted and Karen would be arrested?  9 A. I never said that Karen would be arrested. Although, that  10 was covered in the media. I told her and I told former  11 Chief Boykins that the federal authorities found  12 irregularities and problems in the South Bend Police  13 Department as it relates to the recording of telephone  14 lines. And I said that they have given us 60 days to  15 address these issues. And it was my belief, my  16 understanding that if we did not address those issues, the  17 two city employees could be centered in that  18 investigation, again, and ultimately indicted.  19 Q. Is that what you told Karen?  20 A. I said that, you know, this is a very difficult situation.  21 And I said, "Unfortunately if we do not take these  22 personnel actions, you could be at risk for a potential  23 indictment down the road, or a further investigation of  24 the South Bend Police Department."  25 Q. And that's what you specifically remember telling her?</p>
<p>1 it at that.</p> <p>2 Following that telephone conversation, it came to my  3 knowledge that she had taken some vacation days after that  4 conversation. And so I was unable to get in touch with  5 her until she returned from vacation, which I believe was  6 the following week. It was I think early April. And when  7 she came back, I called her and asked her to come into the  8 County-City Building to meet with me.</p> <p>9 Q. Now, the telephone conversation you were talking about  10 prior to that one you just referred to, if Karen would say  11 it occurred on March 29th, 2012, would that be within the  12 timeframe of your recollection?</p> <p>13 A. It probably would.</p> <p>14 Q. Prior to speaking with Karen on that -- in that first  15 phone conversation, were you aware that she was attempting  16 to contact the mayor to discuss the federal investigation?</p> <p>17 A. No.</p> <p>18 Q. Were you aware that she had spoken with Matt Sikora to  19 find out whether she could talk to the mayor about this  20 federal investigation?</p> <p>21 A. I don't remember.</p> <p>22 Q. Were you advised by Matt Sikora to call Karen to discuss  23 the federal investigation with her?</p> <p>24 A. I'm not sure if she called and left me a message on the  25 29th and I called her back or if she called me directly.</p>	<p>1 A. Yeah. I did not say, you know, I'll have you arrested or  2 you will be arrested.  3 Q. Do you recall telling her that if she talked about the  4 circumstances that you were talking about with her  5 presently that she could be indicted?  6 A. I said that there was a risk that she could be indicted.  7 Q. Okay. Let me try to separate because, as I understand it,  8 there's two aspects to this indictment discussion or  9 whether it took place.  10 First, the issue was whether or not you discussed  11 with her that if Chief Boykins had not signed a  12 resignation, that he could be indicted and she could be  13 arrested. Second aspect of this is did you inform her  14 that if she talked about this with anyone that she could  15 be indicted. There's two aspects here. Do you remember  16 any of those kinds of conversations, aside from what you  17 already testified to?  18 A. No.  19 Q. Do you recall her asking you who had informed you or who  20 had you spoken to with respect to the feds?  21 A. I don't remember.  22 Q. Do you recall using the terminology "the feds" with her in  23 this conversation?  24 A. I don't know my specific use. I'm sure it was federal  authorities or something along those lines.</p>

<p style="text-align: right;">Page 41</p> <p>1 Q. Do you recall her saying anything about the authorities 2 telling her that she was only a witness -- 3 A. No. 4 Q. -- in their investigation?</p> <p>5 MR. SULLIVAN: Excuse me, Counsel. Your question 6 was whether he told -- 7 MR. DUERRING: No, Karen told him that she was 8 only a witness. 9 MR. SULLIVAN: Sorry.</p> <p>10 BY MR. DUERRING: 11 Q. How do you recall ending that conversation with Karen? 12 A. The telephone conversation? 13 Q. Yes. 14 A. Or the meeting? Again, at the very end of that 15 conversation, she said, "I may just resign by the end of 16 today. I may just resign. I may quit." And, again, 17 sensitive, I listened to that. I said, "You know, this is 18 a very difficult situation, but that might be for the 19 best." And that's how we left that conversation. 20 Q. You said that she apparently went on vacation. And then 21 when she came back, there was, again, contact between the 22 two of you? 23 A. Yes. 24 Q. Do you recall any time between the time you first spoke 25 with her on the phone that we talked about and then</p>	<p style="text-align: right;">Page 43</p> <p>1 A. I spoke with the mayor about it, just that she was still 2 working for the city, but that she had taken time off. 3 That's it. 4 Q. And that's the only issue you spoke with the mayor about 5 between those two dates? 6 A. Uh-huh. 7 Q. When was the determination made that she should be 8 terminated? 9 A. From that meeting after the 23rd, it was the clear 10 indication that we had to head in that direction. I don't 11 recall when the final decision was made. 12 Q. Who made that final decision? 13 A. The mayor. 14 Q. Okay. I'm assuming somehow the mayor had to communicate 15 that decision to you? 16 A. Uh-huh. 17 MR. SULLIVAN: Is that a yes? 18 A. Yes. 19 Q. When was that communication? 20 A. I don't know. I don't remember. 21 Q. How was that communicated? Was it by phone, by fax, by 22 e-mail -- 23 A. It would be face to face. 24 Q. -- by tweeting? 25 A. Face to face.</p>
<p style="text-align: right;">Page 42</p> <p>1 meeting with her again that she advised that she had 2 retained legal counsel? 3 A. I believe right before I met her again, she had retained 4 legal counsel. 5 Q. When do you recall meeting with her again? 6 A. I believe it was early to mid April. I believe the 5th, 7 but it could be the following week. 8 Q. If her recollection would have been April 10th, would that 9 fall within your -- 10 A. Yeah. 11 Q. -- timeframe? 12 A. Probably, yeah. 13 Q. Did you meet with her on that day? 14 A. On or around that day, yeah. 15 Q. What was the purpose of that meeting? 16 A. The purpose of the meeting was to outline the findings of 17 the federal authorities into the investigation of the 18 South Bend Police Department. It was also to talk about 19 her employment with the city and to seek her resignation. 20 Q. Between March 29th, saying that that was the day that you 21 had the telephone conversation with Karen, and April 10th, 22 if, in fact, she's accurate on that being the date that 23 you next spoke with her -- 24 A. Yeah. 25 Q. -- did you speak with anyone about her employment status?</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. Face to face, the old fashion kind. 2 Was anyone else besides you and the mayor present at 3 that meeting? 4 A. I don't recall. 5 Q. Tell me about that meeting. 6 A. I don't remember the details of the meeting. Again, it 7 may have been just a face-to-face exchange between the 8 mayor and myself. 9 Q. Did you make any additional recommendations to the mayor 10 as to what he should do at that meeting with respect to 11 Karen's employment? 12 A. No. 13 Q. What did the mayor tell you at this meeting as it relates 14 to Karen? 15 A. That she could no longer be director of communications. 16 Q. Okay. Did he say anything else with respect to that? 17 A. Huh-huh. 18 MR. SULLIVAN: Is that a no? 19 A. No. Sorry. 20 Q. And I can't -- I'm assuming -- I hate assuming, but I'm 21 assuming that meeting took place sometime between the 29th 22 of March and the 10th of April, if those are accurate 23 dates. 24 A. Could have been before the 29th of March. 25 Q. Okay.</p>

<p style="text-align: right;">Page 45</p> <p>1 A. Between the 23rd and -- actually between the 23rd and the 2 29th when I talked to her on the phone because my 3 commentary in that telephone conversation was I needed to 4 meet with her, we needed to talk about an employment 5 issue.</p> <p>6 And so between the 23rd, that's a Friday, to the 7 29th, that would have been the directive from the mayor.</p> <p>8 Q. What occurred at the next meeting with Karen, which would 9 have been that, say, April 10th --</p> <p>10 A. April 10th.</p> <p>11 MR. SULLIVAN: If April 10th is the accurate 12 date.</p> <p>13 MR. DUERRING: You're right.</p> <p>14 A. I called her into the County-City Building. We met in a 15 conference room on the 14th floor. Interim Chief Chuck 16 Hurley was present, as was Special Counsel Richard Hill, 17 myself. As I did over the telephone with her, I outlined 18 that the U.S. Attorney's office, FBI conducted an 19 investigation into the recording practices in the South 20 Bend Police Department.</p> <p>21 They found that we were out of compliance with 22 federal guidelines and that the administration had decided 23 to take two personnel actions, the first being former 24 Chief Boykins and the second being Ms. DePaepe. I 25 informed her that she could no longer hold that position.</p>	<p style="text-align: right;">Page 47</p> <p>1 Q. You had mentioned something earlier on. You used the 2 phrase "due diligence." I want to go back to that. What 3 did you mean by that?</p> <p>4 A. That in that meeting with the U.S. Attorney and the FBI, 5 they outlined some areas in the recording of telephone 6 lines where we were out of compliance with federal 7 regulations, and that one of the results of that meeting 8 was that we had to -- that we had problems with two people 9 in the city administration and that we needed to update 10 our telephone recording policies and make sure that there 11 were clear guidelines over appropriate use.</p> <p>12 And the mayor obviously wanted us to be fully 13 compliant with all laws and all regulations. And so I 14 worked with members of the legal department and the police 15 department to see what lines were recorded and why because 16 the federal authorities outlined a use that was improper. 17 And I wanted to, first of all, see what the proper 18 recording techniques were and what was compliant with the 19 law. And that included and still includes 911 and 20 emergency dispatch calls and calls into the front desk at 21 the South Bend Police Department.</p> <p>22 And so the administration wanted to make sure that we 23 were still recording the lines that were necessary for law 24 enforcement activity and that we were not recording the 25 lines that were discussed in the meeting with federal</p>
<p style="text-align: right;">Page 46</p> <p>1 I gave her the opportunity to resign. She refused to 2 resign. And I said if you refuse to resign, unfortunately 3 we'll have to terminate you. And I remember distinctly 4 that she said I want you to terminate me, and that was 5 about everything I recall from that meeting.</p> <p>6 Q. Do you recall whether or not there was any discussion by 7 anyone present at that meeting informing Karen that if she 8 talked about anything that was going on she could be 9 arrested?</p> <p>10 A. No.</p> <p>11 Q. Do you recall any discussion being made about whether or 12 not she would get unemployment compensation?</p> <p>13 A. I don't remember.</p> <p>14 Q. Why was Chuck Hurley present, if you know?</p> <p>15 A. Ultimately, the chief of police, interim chief of police, 16 would have to sign, I believe, a personnel document 17 relating to her employment; and so he was present for that 18 purpose.</p> <p>19 Q. Did --</p> <p>20 A. I believe.</p> <p>21 Q. Did Chuck Hurley have any input with respect to the 22 decision to terminate Karen's employment?</p> <p>23 A. No.</p> <p>24 Q. Was that the last time you spoke with Karen?</p> <p>25 A. Yes,</p>	<p style="text-align: right;">Page 48</p> <p>1 authorities. Very two distinct issues there.</p> <p>2 Q. So that's what you meant by due diligence?</p> <p>3 A. Yeah. So I wanted to see, learn for myself what lines are 4 being recorded in the South Bend Police Department and 5 why.</p> <p>6 Q. Okay. And what did you learn?</p> <p>7 A. That we record 911 telephone calls, emergency dispatches, 8 and that we record calls that come into the front desk of 9 the South Bend Police Department.</p> <p>10 Q. How did you learn that information?</p> <p>11 A. Received material from the South Bend Police Department in 12 conjunction with the city's legal department.</p> <p>13 Q. And was that what you thought or what you believed was 14 being done at the time this investigation took place?</p> <p>15 A. Yeah. I thought that 911 and dispatch calls were being 16 recorded. I did not know the details of the front desk 17 line calls.</p> <p>18 MR. SULLIVAN: We're coming up on noon. I just 19 didn't know what your thought was about lunch and how 20 much longer, pushing through, whether you want to 21 break now.</p> <p>22 MR. DUERRING: I'd like to push through. I can't 23 imagine it can be that much longer. Does anybody 24 need a break?</p> <p>25 MR. SULLIVAN: Yeah.</p>

<p>1 (Recess taken.)</p> <p>2 BY MR. DUERRING:</p> <p>3 Q. Before we took a break, Mr. Schmuhl, we were discussing</p> <p>4 about what you learned concerning, I guess, the logistics</p> <p>5 of the recording policies for what lines were recorded.</p> <p>6 And I just want to really take some time and discuss with</p> <p>7 you what you learned and from whom you learned it. All</p> <p>8 right.</p> <p>9 Just coming right out of the box, did you ever talk</p> <p>10 to Karen DePaepe about how the recording system worked?</p> <p>11 A. I don't recall.</p> <p>12 Q. Who did you talk to about how the recording system worked?</p> <p>13 A. I remember speaking with primarily legal counsel with the</p> <p>14 City of South Bend, Andrea Beachkofsky, assistant city</p> <p>15 attorney.</p> <p>16 Q. Why, if I may ask, did you chose to speak with Andrea</p> <p>17 Beachkofsky about the recording system at the South Bend</p> <p>18 Police Department?</p> <p>19 A. She serves as the legal counsel for the public safety</p> <p>20 units of the City of South Bend. And this issue in</p> <p>21 changing a policy, I wanted to make sure we had a lawyer</p> <p>22 looking at all the legal considerations.</p> <p>23 Q. Were you seeking legal advice from her regarding this</p> <p>24 issue or were you seeking information about how the system</p> <p>25 worked?</p>	<p>1 copies.</p> <p>2 (Exhibit 1 marked for identification.)</p> <p>3 Q. Mr. Schmuhl, you've been handed a two-page document that's</p> <p>4 been marked for identification purposes as Exhibit 1. I'd</p> <p>5 ask you to review that and let me know when you're done</p> <p>6 reviewing it.</p> <p>7 A. Okay.</p> <p>8 MR. SULLIVAN: Just show an objection. June 6,</p> <p>9 2012, is well after termination. And I think all the</p> <p>10 questions regarding his inquiry into the system, it's</p> <p>11 all well after termination has taken place. So I</p> <p>12 don't understand how it comes within the scope and is</p> <p>13 reasonably calculated to lead to discovery of</p> <p>14 admissible evidence in regard to this case.</p> <p>15 MR. DUERRING: Well, I'm discussing with him his</p> <p>16 knowledge of and what he learned about the recording</p> <p>17 practices that occurred. The letter that's marked as</p> <p>18 Exhibit 1 specifically, apparently sets out</p> <p>19 information regarding which lines were recorded and</p> <p>20 when they were recorded. And that's why I'm asking</p> <p>21 him about that.</p> <p>22 I intend to ask him about that particular</p> <p>23 correspondence, where that information came from, did</p> <p>24 that information come from him. So I'm asking him</p> <p>25 about what he learned. And I don't believe we had</p>
<p>1 Page 50</p> <p>2 A. I would say both.</p> <p>3 Q. Specifically with regard to information concerning the</p> <p>4 functioning of the system, what did she tell you?</p> <p>5 MR. SULLIVAN: Object. I'll instruct him not to</p> <p>6 answer. It's clearly a communication that is for the</p> <p>7 purpose of legal advice, and I'm going to instruct</p> <p>8 the witness not to answer about any communication</p> <p>9 with Ms. Beachkofsky as long as there was no other</p> <p>10 third party present. But if there was someone else</p> <p>11 from the city present or it's just you and she, I</p> <p>12 would instruct you not to answer that question.</p> <p>13 MR. DUERRING: Are you taking Mr. Sullivan's</p> <p>14 advice and not answering the question?</p> <p>15 THE WITNESS: Yeah.</p> <p>16 MR. DUERRING: I'd like to certify that question.</p> <p>17 BY MR. DUERRING:</p> <p>18 Q. Did you speak with anyone else with respect to gaining</p> <p>19 information on how the recording system functioned besides</p> <p>20 Andrea Beachkofsky?</p> <p>21 A. I don't remember.</p> <p>22 Q. Okay. Did you obtain any or review any manuals or</p> <p>23 documents with respect to how the voice recording system</p> <p>24 worked?</p> <p>25 A. I don't remember.</p> <p>Q. I only have one copy, so we're going to need to make</p>	<p>1 Page 52</p> <p>2 had, as of yet, a timeframe. It was my impression</p> <p>3 that he was learning as part of this due diligence</p> <p>4 practice how the system worked and that this occurred</p> <p>5 sometime between March 23rd and April 10th.</p> <p>6 MR. SULLIVAN: I heard it differently. But I</p> <p>7 think we probably need the witness to clarify that</p> <p>8 because I think it makes a difference. I will</p> <p>9 withdraw my objection if it's in that timeframe.</p> <p>10 MR. DUERRING: Let me ask him the question then.</p> <p>11 BY MR. DUERRING:</p> <p>12 Q. Mr. Schmuhl, when you referred to taking this action in</p> <p>13 learning about the recording practices, if you will, what</p> <p>14 lines were recorded and why they were being recorded, when</p> <p>15 did that educational process take place?</p> <p>16 A. Following the meeting with federal authorities.</p> <p>17 Q. And before the final meeting with Ms. DePaepe?</p> <p>18 A. I don't remember.</p> <p>19 Q. Could it have been within that timeframe?</p> <p>20 A. I don't know.</p> <p>21 Q. Then I'm going to ask him questions about it.</p> <p>22 MR. SULLIVAN: I withdraw the objection.</p> <p>23 MR. DUERRING: All right.</p> <p>24 Q. And I take it, Mr. Schmuhl, you've had occasion to</p> <p>25 thoroughly review Exhibit 1, correct?</p> <p>A. Yes, I've read it.</p>

<p style="text-align: center;">Page 53</p> <p>1 Q. Have you seen that correspondence prior to today?</p> <p>2 A. I wrote it.</p> <p>3 Q. That answered my second question. I'm assuming you wrote</p> <p>4 it and then the mayor signed it? Because I think --</p> <p>5 MR. SULLIVAN: Exhibit 1 isn't signed, Counsel.</p> <p>6 A. It's unsigned. It's a draft.</p> <p>7 Q. There's a signature line.</p> <p>8 A. Right.</p> <p>9 Q. For the mayor?</p> <p>10 A. Mayor reviews correspondence, any correspondence,</p> <p>11 obviously, before placing his signature on it.</p> <p>12 Q. Now, the information as it relates in that correspondence</p> <p>13 with respect to which lines were recorded, where did you</p> <p>14 get that information?</p> <p>15 A. I don't remember.</p> <p>16 Q. Is there anything that you have, any documents, any</p> <p>17 e-mails, any notes or correspondence that you would have</p> <p>18 that you could review in order to help refresh your</p> <p>19 recollection of where you obtained that information?</p> <p>20 A. I provided material relating to the policy changes in the</p> <p>21 South Bend Police Department to my legal counsel.</p> <p>22 Q. Okay. Would those -- reviewing that information, would</p> <p>23 that help refresh your recollection as to where you</p> <p>24 obtained the information that you placed in this</p> <p>25 correspondence?</p>	<p style="text-align: center;">Page 55</p> <p>1 information came from on Exhibit 1 concerning the lines</p> <p>2 that were recorded?</p> <p>3 A. Yes.</p> <p>4 Q. Did it refresh your recollection?</p> <p>5 A. It did.</p> <p>6 Q. Where did you get the information that you placed in this</p> <p>7 letter that's been marked as Exhibit 1?</p> <p>8 A. I drafted an e-mail, wrote an e-mail to Aladean DeRose,</p> <p>9 interim city attorney, and Mayor Buttigieg on this issue;</p> <p>10 and that meshes with the request from counsel. So I was</p> <p>11 looking into this information sometime in late May, early</p> <p>12 June.</p> <p>13 MR. SULLIVAN: And then if I may, Counsel, the</p> <p>14 specific question about the source of the information</p> <p>15 that you put in here. Did you see anything that</p> <p>16 helped you remember the source of the information</p> <p>17 that you put in here?</p> <p>18 THE WITNESS: I did not see anything that would</p> <p>19 give me the source.</p> <p>20 MR. SULLIVAN: Do you know the source of the</p> <p>21 information?</p> <p>22 THE WITNESS: I don't know. To be specific, I</p> <p>23 don't know.</p> <p>24 BY MR. DUERRING:</p> <p>25 Q. Okay. What I glean from your answer then, Mr. Schmuhl, is</p>
<p style="text-align: center;">Page 54</p> <p>1 A. Probably.</p> <p>2 MR. DUERRING: Do you know where we have that</p> <p>3 around here, where we could take a break and he could</p> <p>4 take a look at it?</p> <p>5 MR. SULLIVAN: I think you'll have to make a</p> <p>6 document request so that we can evaluate and respond</p> <p>7 accordingly. I'm not going to produce documents on</p> <p>8 the fly.</p> <p>9 MR. DUERRING: I'm not asking you to produce</p> <p>10 them. I'm asking if he can have the opportunity to</p> <p>11 review them. I don't need to look at them. As long</p> <p>12 as they refresh his recollection, I don't care what</p> <p>13 they say, right now.</p> <p>14 MR. SULLIVAN: Let me take a break and talk to</p> <p>15 him.</p> <p>16 MR. DUERRING: Okay.</p> <p>17 (Recess taken.)</p> <p>18 (Read back.)</p> <p>19 BY MR. DUERRING:</p> <p>20 Q. So when we broke, you mentioned that there was some</p> <p>21 possible documents you could review in order to refresh</p> <p>22 your recollection; is that correct?</p> <p>23 A. Yes.</p> <p>24 Q. All right. Have you been able to review anything that</p> <p>25 refreshes your recollection with respect to where this</p>	<p style="text-align: center;">Page 56</p> <p>1 -- and, again, I'm sure you'll correct me if I'm wrong --</p> <p>2 that the information you placed concerning the recording</p> <p>3 practices and which lines were recorded and when they were</p> <p>4 and when they weren't, as detailed in Exhibit 1, that</p> <p>5 information did not come to you until after the</p> <p>6 termination of Karen DePaepe; Is that correct?</p> <p>7 A. That's correct.</p> <p>8 Q. Did you take any steps between the meeting with the</p> <p>9 federal authorities that occurred on March 23rd, 2012, and</p> <p>10 the meeting that you had with Karen on April, say, 10th or</p> <p>11 thereabouts that terminated her, did you take any steps to</p> <p>12 learn what the practices and what the functions were of</p> <p>13 the recording system?</p> <p>14 A. No.</p> <p>15 Q. Did anyone volunteer between that period of time -- again,</p> <p>16 the 23rd of March and April 10th, assuming those are the</p> <p>17 correct dates, did any person come up to you and volunteer</p> <p>18 information about the system to you, without your request?</p> <p>19 A. No.</p> <p>20 Q. Did you get any anonymous information about the system</p> <p>21 between those two periods of time?</p> <p>22 A. No. Not to my recollection, no.</p> <p>23 Q. Did you hear what is referred to as gossip or rumors</p> <p>24 concerning how the system worked or didn't work between</p> <p>25 that period of time?</p>

<p style="text-align: right;">Page 57</p> <p>1 A. You always hear gossip and rumors.    2 Q. Especially from the police department?    3 A. Especially from the police department, but I don't recall    4 specifically anything.    5 Q. Was there ever a discussion that you had with the mayor    6 specifically about trying to learn this information to    7 either confirm or not confirm what the federal authorities    8 were telling you?    9 A. I remember, you know, the mayor issuing a directive and    10 myself issuing a directive that we needed to stop the    11 recording of certain telephone lines as soon as possible    12 following the meeting with federal authorities. In that    13 meeting it was very clear that we were out of compliance    14 through the recording of certain telephone lines. As a    15 concern to the mayor, he issued a directive to make sure    16 we were within the law, that we're no longer recording    17 people's conversations without their knowledge. And so    18 the mayor issued that directive, and I made sure that it    19 was followed through.    20 Q. Was it your impression after the meeting with federal    21 authorities that in order to be in compliance with -- I    22 guess we're talking in general with the federal wiretap    23 statute. I forget what it's called, but that's what we    24 call it. That in order to be in compliance and that the    25 only way to be in compliance was to be sure that everyone,</p>	<p style="text-align: right;">Page 59</p> <p>1 A. Because of the meeting that was held with the federal    2 authorities.    3 Q. Can you recall specifically who told you that during the    4 meeting?    5 A. It was either Mr. Capp or Mr. Schmid.    6 Q. And they -- one of the two told you that in order to be in    7 compliance, at least one party to the conversation had to    8 consent to having a conversation being recorded?    9 A. Yeah. Yes.    10 Q. They didn't talk to you about any other exceptions that    11 exist in the Wiretap Act, if any?    12 A. In that meeting, no.    13 Q. I may have asked this question. I'm kind of lost whether    14 I did or not. Just to clarify, between the date of March    15 23rd, 2012, and April 10th, assuming those are the correct    16 dates that the meeting with the feds occurred and the    17 meeting occurred when she was terminated, between those    18 two periods of time, it's my understanding you did not --    19 you were not aware or did not conduct any independent    20 investigation to become aware of how the system, recording    21 system worked; is that correct?    22 A. That's correct.    23 Q. And that includes not asking Karen, the director of    24 communications, how the system worked, correct?    25 A. That's correct.</p>
<p style="text-align: right;">Page 58</p> <p>1 or at least one of the parties to the phone conversation    2 had to consent to the recording or be aware of the    3 recording? Is that what your understanding was?    4 MR. SULLIVAN: Objection to the extent it calls    5 for a legal conclusion. You may answer.    6 A. From the meeting from the 23rd?    7 Q. Yes.    8 A. Can you repeat your question?    9 MR. DUERRING: Can you read it back?    10 (Read back.)    11 A. You know, it was my understanding that listening to those    12 conversations was wrong, making recordings of those    13 conversations was wrong, copying those recordings is    14 wrong, and using that material was wrong. And so it    15 wanted to stop all four of those things.    16 Q. Why --    17 A. And I don't recall, you know -- one party consent is the    18 law, I believe, in Indiana. Again, I'm not a lawyer. And    19 I'm not sure if I learned that when I -- when I learned    20 that. It would be in the meeting. Yeah. Because if    21 you're not privy to that conversation, it's wrong.    22 Q. That's -- was that an understanding you derived from your    23 own research or was that an understanding you derived    24 after the -- or because of the meeting that was held with    25 the federal authorities?</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. Was it your understanding based upon the meeting with the    2 U.S. Attorney and the federal authorities that the    3 recording practices that were in existence when these    4 phone conversations were recorded were basically    5 controlled by the chief of police?    6 MR. SULLIVAN: Hold on. Would you read back that    7 last --    8 (Read back.)    9 MR. SULLIVAN: Go ahead.    10 A. My recollection from that meeting was that the federal    11 authorities outlined a practice that certain lines were    12 recorded at the chief's discretion by the director of    13 communications, so an order from the chief, a request from    14 the chief to the director of communications to do that.    15 Q. Okay. Were you aware or did you become aware between that    16 period of time, again, the 23rd of March and the 10th of    17 April, that the director of communications was    18 subservient, that position was subservient to the chief of    19 police?    20 MR. SULLIVAN: Objection, vague, "subservient."    21 Go ahead.    22 A. In that timeframe?    23 Q. Yeah. Do you understand the question?    24 A. Meaning that she reports to the chief?    25 Q. And the chief, if the chief directs her to do something,</p>

Page 61	Page 63
1        that's something that she has to do. That's her boss, in 2        other words?	1 2
3        A. Yeah, the chief of police is the head of the police 4        department.	3 4
5        Q. And were you aware of that chain of command during that --	5
6        A. During that period of time?	6
7        Q. Yes.	7
8        A. Yes.	8
9        Q. Was there any consideration in your discussions with the 10        mayor regarding Karen's employment that if the chief was 11        ordering her to do something that she had to do it? In 12        other words, if she was following orders, was there a 13        consideration with respect to that?	9 10 11 12 13
14        MR. SULLIVAN: Objection, vague. You mean 15        consideration prior to termination?	14 15
16        MR. DUERRING: Right.	16
17        MR. SULLIVAN: With the mayor? Go ahead. You 18        can answer.	17 18
19        BY MR. DUERRING:	19
20        Q. As somewhat of a mitigating circumstance when dealing with 21        whether she was going to be terminated or not.	20 21
22        A. I don't remember.	22
23        Q. At any point in time between those two dates that we've 24        been talking about, March 23rd and April 10th, was there 25        any discussion with respect to the contents of the	23 24 25
Page 62	Page 64
1        recording -- recorded conversations?	1
2        A. Yes.	2
3        Q. And who was that with?	3
4        A. Myself and Karen.	4
5        Q. Okay. Did you speak about those contents with anyone 6        else?	5 6
7               MR. SULLIVAN: You mean after --	7
8        Q. Yeah. After your conversation with Karen obviously.	8
9        A. Yes.	9
10        Q. Who was that?	10
11        A. The mayor.	11
12        Q. And that was prior to April 10th; is that correct?	12
13        A. Yes. I spoke with Karen about that when we spoke on the 14        phone on or about the 29th of March.	13 14
15        Q. And you conveyed that information to the mayor prior to 16        April 10th, correct?	15 16
17        A. Just very briefly, uh-huh. Karen said that, again, when 18        she was talking about other officers on the force and 19        defending the chief, she said that there were individuals 20        on the telephone calls making derogatory and disrespectful 21        comments to not only the chief, but also to the mayor.	17 18 19 20 21
22        And I just told him briefly as an aside that she mentioned 23        that.	22 23
24        (Pages 63 and 64 are designated as Attorneys' 25        Eyes Only.)	24 25

PAGE 63 IS DESIGNATED  
ATTORNEYS' EYES ONLYPAGE 64 IS DESIGNATED  
ATTORNEYS' EYES ONLY

Page 65	Page 67
<p>1 BY MR. DUERRING:</p> <p>2 Q. During any point in time -- again, we appear to be talking 3 about the timeframe between March 23rd and April 10th. 4 Did you convey to Karen anything that you would -- that 5 you felt that criminal charges would result if she did or 6 didn't do anything?</p> <p>7 MR. SULLIVAN: Objection, vague, complex. Go 8 ahead.</p> <p>9 A. In the meeting that I had with her on or around the 10th 10 in seeking her resignation and ultimate termination, I did 11 say that the federal authorities informed the City of 12 South Bend that if the city did not take care of this 13 issue within 60 days, that they would reopen the 14 investigation. I told her that there was a potential risk 15 that if they reopened this investigation, that two 16 individuals who were the focus of that investigation could 17 be in trouble.</p> <p>18 Q. Is that the wording you used, "could be in trouble," or 19 did you use any other wording?</p> <p>20 A. I don't recall specific wording I used.</p> <p>21 Q. Were there any documents or documentation made of that 22 meeting that occurred on April 10th with Karen?</p> <p>23 A. Not to my knowledge, no.</p> <p>24 Q. Again, in that same timeframe we've been talking about, 25 March 23rd to April 10th, did you learn who specifically</p>	<p>1 all I know.</p> <p>2 Q. Did you know whether or not that included the South Bend 3 Police Department?</p> <p>4 A. I don't recall.</p> <p>5 Q. Did you have any other meetings or conversations with 6 David Capp or Donald Schmid or any other representative 7 from the federal government after the March 23rd meeting?</p> <p>8 A. Yes.</p> <p>9 Q. Who did you speak with?</p> <p>10 A. Since that time I've spoken with Ken Hayes and David Capp.</p> <p>11 Q. When did you speak with Mr. Hayes?</p> <p>12 A. I spoke with Mr. Hayes -- I don't recall when. I believe 13 I talked to him a couple times.</p> <p>14 Q. But you don't remember when?</p> <p>15 A. I don't remember when, no. Last time I spoke with 16 Mr. Hayes was toward the end of my time as chief of staff. 17 I met with him to discuss the mayor's antiviolence 18 commission using federal authorities to assist the South 19 Bend Police Department and the City of South Bend combat 20 gun violence and youth violence in our community. 21 And I remember I did have a conversation with Ken 22 Hayes as it relates to the recording of telephone lines. 23 And I don't know when that was. But the outcome of that 24 conversation was that Mr. Hayes said that they did not 25 need anything additionally from the City of South Bend.</p>
Page 66	Page 68
<p>1 authorized the phone line to be recorded that was the 2 product of these recordings?</p> <p>3 A. No.</p> <p>4 Q. Between that period of time, same period of time, did you 5 have any discussions with any companies that supplied 6 equipment to the city police department as it relates to 7 the voice recording system?</p> <p>8 A. I don't believe so, no.</p> <p>9 Q. Did you learn of any procedure on how the lines would be 10 recorded between that period of time?</p> <p>11 MR. SULLIVAN: You mean technically?</p> <p>12 MR. DUERRING: Yes.</p> <p>13 A. No. In the reverse. We were trying to cease the 14 recording of certain lines.</p> <p>15 Q. Do you know how that was done?</p> <p>16 A. No.</p> <p>17 Q. There was already a procedure that was in place wherein 18 the system was being changed. Were you aware of that, in 19 this timeframe?</p> <p>20 MR. SULLIVAN: Objection, vague. You mean VoIP?</p> <p>21 Q. The VoIP, yes.</p> <p>22 A. I knew that the Voiceover IP transition was occurring 23 throughout the city administration, thousands of phones. 24 That started under the Luecke administration and was 25 continuing into the Buttigieg administration. But that's</p>	<p>1 I don't remember the details of why I called him. 2 I'm not sure if the subpoena was still open or if I wanted 3 to make sure that he knew we were in compliance, just to 4 sort of get some recognition from federal authorities that 5 they knew that we took these issues seriously and we 6 addressed them.</p> <p>7 Q. And you mentioned -- and do you remember when that phone 8 conversation would have occurred?</p> <p>9 A. I don't recall, no.</p> <p>10 Q. What about Mr. Capp? You mentioned you spoke with him.</p> <p>11 A. Uh-huh. There was intense media scrutiny surrounding this 12 case. I reached out to Mr. Capp to inquire if we could 13 direct media attention toward his office because a number 14 of the media inquiries related to the investigation and 15 what they found and who was involved and who was targeted. 16 I spoke to Mr. Capp, and he informed me that his press 17 person or communications person would be the appropriate 18 person to direct media to, gave me her telephone number. 19 And that was one conversation.</p> <p>20 I also spoke to Mr. Capp around the same time I spoke 21 to Mr. Hayes. Mr. Capp -- I'm not sure who called who -- 22 was just confirming with me that he and his office would 23 join the mayor's antiviolence commission. And we had a 24 brief conversation about that commission, its work, the 25 commitment to it, who else would be involved. And he was</p>

Page 69	Page 71
1     very supportive of the commission and its work. And that 2     was the last time I spoke with him on the phone.	1     MR. SULLIVAN: There's a lot of technology a lot 2     of us old guys don't know too well.
3     Q. Was any part of that conversation that you just referred 4     to relative to the recording issues or the wiretap issue?	3     MR. DUERRING: I won't even show you my phone.
5     A. No.	4     THE WITNESS: Because -- yeah.
6     Q. So as I understand it, the only time you spoke to Mr. Capp 7     after the March 23rd meeting as it relates to the 8     recording practices was when you were asking him if you 9     could direct media to his office; is that correct?	5     BY MR. DUERRING:
10    A. Yes.	6     Q. Is there anything else that was discussed during that 7     meeting with the U.S. Attorney and the federal authorities 8     that you recall that we haven't talked about today?
11    Q. And did you speak about any of the substance about the 12    recordings or about what was being said in the meeting at 13    that time?	9     MR. SULLIVAN: Objection, vague. Go ahead.
14    A. I don't recall.	10    A. No.
15    Q. To your knowledge, did the mayor ever meet personally with 16    Mr. Capp regarding this issue?	11    Q. And my understanding is that since that meeting, the only 12    two individuals that you've talked to from the U.S. 13    government would have been Ken Hayes and David Capp, 14    correct?
17    A. Personally?	15    A. Yes.
18    Q. Yes.	16    Q. Did you ever learn about how the federal authorities got 17    involved in the investigation or what caused the 18    investigation to start?
19    A. In person, no, I don't think so.	19    A. Yes. Certain police officers approached the FBI with some 20    complaints to look into that issue.
20    Q. To your knowledge, did the mayor ever speak to Mr. Capp in 21    any form of communication?	21    Q. How did you learn that information, or from where did you 22    get that information?
22    A. I remember that the mayor and Mr. Capp and I did have a 23    telephone call.	23    A. Two of the officers came to my office in the County-City 24    Building to complain early on in our time in office, in 25    January, to say that they thought their personal telephone
24    Q. Do you remember when that call was?	
25    A. I do not.	
Page 70	Page 72
1     Q. And what was the substance of that conversation, the 2     telephone conversation?	1     conversations were being recorded and that the chief of 2     police was listening to those conversations.
3     A. I don't remember.	3     Q. Who were they, the two officers?
4     Q. Did it have to do with the investigation into the 5     recording practices?	4     A. They were Steven Richmond, the detective bureau chief, and 5     Brian Young, who was also in the detective bureau.
6     A. I don't know. I think so, but I don't remember.	6     Q. Okay. Do you recall if anyone else besides -- were they 7     both reporting to you at the same time or did you speak 8     with them independently?
7     Q. Do you remember what the results of that conversation 8     were?	9     A. Both at the same time.
9     A. No.	10    Q. Was anyone else present during this conversation that you 11    had with these officers?
10    Q. Do you remember who initiated the phone call?	12    A. No.
11    A. I believe our office initiated the phone call.	13    Q. Do you remember about when this information came to you?
12    Q. Do you remember what the purpose of the phone call was?	14    A. On or around January 18.
13    A. No, I don't.	15    Q. How do you remember that so specifically?
14    Q. And you don't know whether this phone call was made before 15    or after Karen was terminated?	16    A. Steven Richmond e-mailed me following the meeting to thank 17    me for meeting with him and said -- and sort of 18    re-outlined what he said in the meeting and also said in 19    that message that he was thinking of taking their 20    complaint to an investigative authority.
16    A. I don't remember.	21    Q. What did you do as a result of this information?
17    Q. Do you remember any part of that phone conversation?	22    A. I told the mayor about it, and that's about it. I 23    absorbed the information.
18    A. I remember seeing David Capp on my iPhone. That's it. I 19    talked to a lot of people.	24    Q. Do you know if the mayor took any steps or any action?
20    Q. Do you know whether any notes were made of that meeting?	25    A. We didn't have to. A day or two later I got a call from
21    A. I don't think so.	
22    Q. So you're able to see him on your phone. Was there anyone 23    behind him?	
24    MR. SULLIVAN: Do you mean you saw him?	
25    THE WITNESS: I saw his name.	

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<p>1     David Capp saying that they were going to look into some 2     issues in the South Bend Police Department.</p> <p>3     Q. So you got a personal call from David Capp?</p> <p>4     A. Yes.</p> <p>5     Q. What specifically did he say?</p> <p>6     A. He said that we've received some complaints in the South 7     Bend Police Department about the recording of lines, we 8     think there's something there, and we're going to look 9     into it.</p> <p>10    Q. But before you got that call, you didn't take any steps on 11    behalf of the city to look into it?</p> <p>12    A. No.</p> <p>13    Q. Besides the information that you received from 14    Mr. Richmond and Mr. Young, did you receive any other 15    information?</p> <p>16        MR. SULLIVAN: Objection, vague. Go ahead.</p> <p>17    A. As it relates to the recording of the telephone lines?</p> <p>18    Q. Yes.</p> <p>19    A. Yes. I had a meeting with Tim Corbett on or around the 20    same time, and he complained as well about the same 21    issues.</p> <p>22    Q. When was that meeting?</p> <p>23    A. I don't recall.</p> <p>24    Q. What specifically did he complain about?</p> <p>25    A. That he thought that former Chief Boykins was listening to</p>	<p>1     police for South Bend Police Department?</p> <p>2     A. Before that, before the new year a decision was made.</p> <p>3     Q. And that decision was what?</p> <p>4     A. That Darryl Boykins would remain as chief of police for 5     the South Bend Police Department.</p> <p>6     Q. Was it not true that Mr. Corbett was being considered for 7     that position?</p> <p>8     A. Yes.</p> <p>9     Q. And obviously he was rejected?</p> <p>10    A. Yes.</p> <p>11    Q. Was it also not true that Mr. Richmond was being 12    considered for that position?</p> <p>13    A. Yes.</p> <p>14    Q. And he was also rejected?</p> <p>15    A. Yes.</p> <p>16    Q. Was Mr. Young being considered for that position?</p> <p>17    A. No.</p> <p>18    Q. Was there anyone else being considered for that position 19    besides Mr. Richmond and Mr. Corbett other than obviously 20    Mr. Boykins?</p> <p>21    A. No, those were the three candidates for the job.</p> <p>22    Q. Were any of the conversations you had with Mr. Corbett, 23    Mr. Young or Mr. Richmond, did they ever explain to you 24    their belief on how these phone lines were being recorded?</p> <p>25    A. During the transition into office?</p>
Page 74	Page 76
<p>1     private telephone conversations with certain officers on 2     the police force.</p> <p>3     Q. What else did he say? Did he say how he knew that?</p> <p>4     A. No.</p> <p>5     Q. Did you ask him or did you just listen?</p> <p>6     A. I just listened.</p> <p>7     Q. Was that before or after Richmond and Young had come to 8     you?</p> <p>9     A. I don't recall.</p> <p>10    Q. Was that before or after David Capp had called you?</p> <p>11    A. I don't recall.</p> <p>12    Q. Do you recall anything that you said to Mr. Corbett 13    after -- or during the meeting?</p> <p>14    A. Anything that I said to him?</p> <p>15    Q. Yes.</p> <p>16    A. No.</p> <p>17    Q. Do you remember doing anything specific, taking any action 18    or informing anyone of that meeting with Mr. Corbett after 19    the meeting?</p> <p>20    A. I don't think so, no.</p> <p>21    Q. Anyone else come to you and complain or discuss with you 22    the recording practices?</p> <p>23    A. No.</p> <p>24    Q. During January of 2012, had the mayor's office made a 25    decision with respect to who was going to be the chief of</p>	<p>1     Q. Well, when you had -- when Mr. Richmond and Mr. Young came 2     to you, was there anything that they told you about how 3     they thought -- or why they thought their lines were being 4     recorded or any discussion by them, well, this is how the 5     system works and this is what is done?</p> <p>6         MR. SULLIVAN: Objection, compound. Go ahead.</p> <p>7     A. You mean in the technical aspect of how the system works?</p> <p>8     Q. Yes.</p> <p>9     A. No.</p> <p>10    Q. Did Mr. Richmond -- do you recall him telling you why he 11    thought his line was recorded?</p> <p>12    A. I don't recall.</p> <p>13    Q. Okay. How about from Mr. Corbett, did he expound upon 14    things?</p> <p>15    A. He did, but not related to that issue.</p> <p>16    Q. But not about this particular issue?</p> <p>17    A. On the technical aspects of the system, no.</p> <p>18    Q. What did he expound upon? Did it relate to why he thought 19    things were going on?</p> <p>20    A. He just stated to me that he thought that Chief Boykins 21    was listening to telephone conversations of officers, 22    private conversations, and that he thought that was wrong.</p> <p>23    Q. Did he say why he thought that?</p> <p>24        MR. SULLIVAN: Objection, asked and answered. Go 25    ahead.</p>

Page 77	Page 79
1                   THE WITNESS: What did you say?	1                   "Cassette tapes you put in a tape deck?" And they said,
2                   MR. SULLIVAN: I said asked and answered.	2                   "Yes, cassette tapes." And that's about as technical as I
3                   A. I don't recall.	3                   remember.
4                   BY MR. DUERRING:	4                   Q. Prior to Karen being terminated, did you or -- were you
5                   Q. Well, what specifically do you recall Mr. Corbett telling	5                   aware of anyone reviewing her personnel file?
6                   you?	6                   A. No.
7                   A. He was upset and he was mad. He thought the chief was	7                   Q. Prior to her being terminated, did you speak with anybody
8                   listening to personal or private conversations of	8                   about Ms. DePaepe's performance with the city?
9                   officers, people that he knows and works with. And he	9                   A. No.
10                  said that somebody should look into it, should have an	10                  Q. Since then, have you spoken with anybody about it?
11                  investigation. That's about it.	11                  A. Her performance?
12                  Q. Did he ever indicate to you that he believed he was the	12                  Q. Yes.
13                  subject of any of the recorded phone conversations?	13                  MR. SULLIVAN: In what timeframe?
14                  A. I don't remember.	14                  MR. DUERRING: Any time since April 11th.
15                  Q. Is there anyone else, aside from any attorneys with the	15                  MR. SULLIVAN: I'm sorry. I was unclear.
16                  city, that you had a conversation with regarding these	16                  Object. I think your question is vague as to her
17                  issues? And I'm saying these issues concerning the	17                  performance. She was a long-term employee with the
18                  recording practice, the investigation, the complaints	18                  city. So what performance are you asking --
19                  regarding those, the action taken, anyone else that we	19                  MR. DUERRING: As director of communications.
20                  haven't talked about. We talked about Steve Richmond,	20                  MR. SULLIVAN: Through her entire tenure?
21                  Brian Young, Tim Corbett, Dave Capp, people listed in the	21                  BY MR. DUERRING:
22                  March 23rd meeting.	22                  Q. Yes, which would have been from like 1999 I think is when
23                  A. You mean from March 23rd to April 10th?	23                  she took office in that position. She worked for the city
24                  Q. Yes.	24                  prior to that. But in her tenure as director of
25                  A. I don't recall. Those would be the main ones, yeah.	25                  communications, did you speak with anyone concerning her
Page 78	Page 80
1                  Q. And my understanding is from January 1st to April 10th,	1                  performance?
2                  you fundamentally took no independent action to learn	2                  A. No. Between what dates?
3                  about how the system worked and whether or not even it	3                  Q. I think I asked you between January 1st and April 10th and
4                  could do what was being alleged to have been done; is that	4                  you said no. And I'm talking --
5                  correct?	5                  A. One person did call me to say that he thought Karen
6                  A. No. The information that we received from federal	6                  DePaepe should stay employed with the city.
7                  authorities, you know, if an independent body is going to	7                  Q. Do you remember when that occurred?
8                  conduct an investigation, I think the FBI is pretty good	8                  A. I don't remember specifically. I remember the person's
9                  at it. So we took their report, their briefing at face	9                  name.
10                 value. And so we sought to make those personnel changes	10                 Q. Who was that?
11                 and those policy changes for the City of South Bend.	11                 A. Lieutenant Chris Voros, who was in the services division
12                 Q. It's my understanding -- and you can correct me obviously	12                 of the South Bend Police Department.
13                 if I'm wrong. When you had the meeting with federal	13                 Q. Do you recall what he said to you specifically?
14                 authorities, they spoke -- it sounded vaguely of being not	14                 A. He basically said Karen is a good employee and that she
15                 in compliance, but did they ever speak to you of how the	15                 should stay.
16                 system worked as it relates to why they felt it was not in	16                 Q. Okay.
17                 compliance?	17                 A. That's it.
18                 A. You mean from a technical standpoint?	18                 Q. That's it. Did you say anything to him?
19                 Q. Right.	19                 A. No. It's a personnel matter and it's between other
20                 A. Like the equipment and --	20                 parties.
21                 Q. Right.	21                 Q. To your knowledge, besides the input that you briefed the
22                 A. -- and phones and wires and stuff like that?	22                 mayor on, were there any other sources of information that
23                 Q. Right.	23                 were used by the mayor to make the determination that
24                 A. No. The only thing technically is they said that tapes	24                 Karen should be terminated?
25                 were made, cassette tapes. I remember we all said,	25                 A. Apart from the -- okay.

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1                   MR. SULLIVAN: Objection, lack of foundation, no	1
2                   personal knowledge as to what would be in the mind of	2
3                   the mayor. Subject to that, you can answer.	3
4                   A. Apart from the federal briefing?	4
5                   Q. Yeah. And apart from your briefing to him because he	5
6                   wasn't present for -- apart from that, was there any other	6
7                   source of information that was used by him to direct --	7
8                   I'm assuming he directed you to terminate Karen, correct?	8
9                   A. Uh-huh.	9
10                  Q. Was there anything that you were aware of that he would	10
11                  have told you about in addition to what you told him that	11
12                  he was saying, well, this is why?	12
13                  A. No.	13
14                  Q. Aside from Steve Richmond, Brian Young, Tim Corbett, and	14
15                  Chris Voros, were there any other officers that spoke with	15
16                  you concerning the recording practices, Karen, Chief	16
17                  Boykins, as it relates to the issues involved in this	17
18                  lawsuit?	18
19                  A. I don't think so.	19
20                  MR. DUERRING: I don't think I have any other	20
21                  questions.	21
22                  MR. SULLIVAN: I would like to take a quick	22
23                  break. Okay?	23
24                  MR. DUERRING: Okay.	24
25                  (Recess taken.)	25
PAGE 83 IS DESIGNATED ATTORNEYS' EYES ONLY	
Page 82	Page 84
1                   CROSS-EXAMINATION	1
2                  BY MR. SULLIVAN:	2
3                  Q. Mr. Schmuhl, you remember questioning from Attorney	3
4                  Duerring concerning the meeting that you had in the	4
5                  mayor's office on March 23rd after you met with Mr. Capp,	5
6                  right?	6
7                  A. Uh-huh.	7
8                  Q. Is that a yes?	8
9                  A. Yes.	9
10                 Q. And then there came a time where you had a discussion with	10
11                 the mayor after that that was essentially finalizing the	11
12                 view that you wanted to seek Ms. DePaeppe's resignation or	12
13                 you would terminate her. Do you remember the questioning	13
14                 from that?	14
15                 A. Yes.	15
16                 (Pages 83 and 84 are designated as Attorneys'	16
17                 Eyes Only.)	17
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PAGE 84 IS DESIGNATED ATTORNEYS' EYES ONLY	

<p style="text-align: right;">Page 85</p> <p>1           MR. SULLIVAN: Okay. And I have no further 2           questions. Off the record. 3           (Discussion held off the record.) 4           REDIRECT EXAMINATION 5    BY MR. DUERRING: 6    Q. Just one question. Your answers to the questions that 7           were just asked of you, Mr. Schmuhl, do not in any way 8           change or modify the answers you gave me on direct 9           examination with respect to what information you recall 10          Karen telling you about the content of the conversation 11          was -- or the recordings were; is that correct? 12          A. It's not changed, no. 13          Q. And it doesn't change your answers in direct where you had 14          a conversation with the mayor regarding that content, 15          correct? 16          MR. DUERRING: I don't have any other questions. 17          So that was two. 18          MR. SULLIVAN: It was two. Mr. Schmuhl, the 19          court reporter will type this up into a transcript, 20          and you will have an opportunity to review that 21          transcript. There will be what's called an errata 22          sheet which will allow you to note any errors in the 23          transcription. 24          THE WITNESS: Okay. 25          MR. SULLIVAN: She's the best in the business. I</p>	<p style="text-align: right;">Page 87</p> <p>1           CERTIFICATE 2 3           I, Angela J. Galipeau, a Notary Public, in and for 4           the County of Porter and State Of Indiana, do hereby 5           certify: 6           That MICHAEL SCHMUHL appeared before me on 7           Tuesday, July 30, 2013, and was duly sworn or affirmed to 8           testify the truth, the whole truth, and nothing but the 9           truth to questions propounded at the taking of the 10          foregoing deposition in a cause now pending and 11          undetermined in said court; 12          That I further certify that I then and there 13          reported stenographically the proceedings at the said time 14          and place; that the proceedings were then transcribed from 15          my original shorthand notes; and that the foregoing 16          typewritten transcript is a true and correct record 17          thereof; 18          That I am not a relative or employee or attorney 19          or counsel, nor a relative or employee of such attorney or 20          counsel for any of the parties hereto, nor am I interested 21          directly or indirectly in the outcome of this action; 22          IN WITNESS WHEREOF, I have hereunto set my hand 23          and affixed my notarial seal this 5th day of August, 2013. 24 25</p> <p style="text-align: right;">Angela J. Galipeau, RPR, CSR Notary Public, State of Indiana Residence: Porter County Commission Expires: 4-30-2014 Porter County My Commission Expires April 23, 2017</p>
<p style="text-align: right;">Page 86</p> <p>1          don't mean to imply that there would be errors. But 2          if you find any errors in the transcription, do you 3          agree to note those in the errata sheet? 4          THE WITNESS: Yes. 5          MR. SULLIVAN: And how do you want to handle 6          signature? He'll be in Paris. 7          REPORTER: I'll have this done pretty quick. 8          MR. SULLIVAN: So we'll review and sign. We're 9          off the record. 10         (The deposition concluded and witness excused at 11         1:26 p.m.) 12         * * *</p>	<p style="text-align: right;">Page 88</p> <p>1           UNITED STATES DISTRICT COURT 2           NORTHERN DISTRICT OF INDIANA 3           SOUTH BEND DIVISION 4           KAREN DEPAEPE, ) 5           Plaintiff,    ) 6           vs            ) Case No. 3:13-CV-383 7           CITY OF SOUTH BEND and PETE ) 8           BUTTIGIEG, Individually and in his ) 9           official capacity as Mayor of the ) 10          City of South Bend,    ) 11          Defendants.    ) 12 13          MICHAEL SCHMUHL 14          I hereby acknowledge that I have read the foregoing 15          transcription regarding the case of <i>Karen DePaepe vs City 16          of South Bend, et al.</i>, taken Tuesday, July 30, 2013, and 17          that the same is a true and correct transcription of the 18          answers given by me to the questions propounded, except 19          for the additions or changes, if any, as noted on the 20          attached errata sheet. 21 22          MICHAEL SCHMUHL 23          SUBSCRIBED AND SWEORN to 24          before me this _____ day 25          of _____ A.D. _____ 26 27          Notary Public, State of Indiana 28          County of Residence: _____ 29          My Commission Expires: _____</p>

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

MICHAEL SCHMUHL

I hereby acknowledge that I have read the foregoing transcription regarding the case of Karen DePaepe vs City of South Bend, et al., taken Tuesday, July 30, 2013, and that the same is a true and correct transcription of the answers given by me to the questions propounded, except for the additions or changes, if any, as noted on the attached errata sheet.

Michael R. Schmitt  
Michael Schmitt

MICHAEL SCHMUHL

SUBSCRIBED AND SWEARN to  
before me this 10th day  
of August A.D. 2013.

Notary Public, State of Indiana  
County of Residence: Elkhart  
My Commission Expires: 10/19/15

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## *ERRATA SHEET*

30833 ag

Deposition of: Michael Schmuhl

July 30, 2013

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Signature: Michael R. Shull  
Date: August 12, 2013